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CURRENT TOPICS

Sir George Branson

MANY practitioners will remember Sir GEORGE BRANSON, whose death on 23rd April, 1951, at the age of seventy-nine we record with sorrow. Like many others who rose to the Bench, he commenced his career as an articled clerk, being articled to Messrs. Markby, Stewart & Co. In 1899 he was called to the Bar, and it was in Rufus Isaacs' chambers that he obtained his substantial experience of really heavy work. In 1921 he was appointed an additional judge of the King's Bench Division and he retired in 1940. He was joint author of the authoritative text-book on The Law of the Stock Exchange, Schwabe and Branson.

Legal Aid at the Privy Council

A PERSUASIVE plea for the extension of legal aid to representation before the Judicial Committee of the Privy Council was made by Mr. F. H. COLLIER in *The Times* of 24th April. He said that at present an appellant who desired to obtain legal aid in the Privy Council had to petition as a pauper and had to swear, among other things, that he was not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the intended appeal. Judging by the number of appeals, it could not be said to impose a burden on the economy of this country for the Legal Aid and Advice Act to be applied to proceedings on appeal to the Privy Council in any event. It would appear that this is a matter for the colony concerned, but if anything can be done here to make this desirable extension of legal aid available to all subjects of the Commonwealth before its supreme appeal tribunal, it should be done.

Purposeless Civil Aid Certificate

ON an application for an order of certiorari for quashing an adoption order on 26th April (*The Times*, 27th April) in the Divisional Court, the LORD CHIEF JUSTICE said that the case seemed to be one where legal aid had been granted for no purpose whatever. The father was present by counsel merely to say that he did not oppose the application. He (the Lord Chief Justice) could not understand many of the cases which came before the courts in which persons were granted legal aid at the public expense. It was a very serious matter. The country was being put to enormous expense through the granting of legal aid in cases where it should never have been granted at all. It appeared to be another development of the Welfare State that persons who had nothing that they wanted to say to the court yet appeared before it as assisted persons, and their costs had to be taxed and paid by the State. This was yet another of the cases which, the court hoped, would be brought to the notice of the appropriate authority.

Drafting of Company Documents by Accountants

IT is a common-sense principle, recognised in practice by the governing bodies of the professions in this country, that the specialised function of each profession should be sharply

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defined, and that there should be no overlapping. One of the most recent examples of this was the reminder in the *Accountant* of 12th August, 1950, by the Council of the Institute of Chartered Accountants, that the drafting and settling of memoranda and articles of association should properly be left to solicitors. In a further statement in the *Accountant* of 16th December, 1950, the Council said that there was no objection to a member assisting a client in connection with the formation of a company and giving his views on the contents of the memoranda of association and articles, particularly on the clauses relating to accounts. A member might make suggestions with a view to assisting the legal advisers in drafting. These statements have been republished in the *Accountant* of 28th April, 1951, as part of the report for 1950–51 of the Council of the Institute of Chartered Accountants, and the republication is timely, since the same issue contains a letter from a reader who apparently takes a different view. "In the name of common sense" he points out that the company registration agents supply drafts of memoranda and articles which have been settled by counsel. Accountants sit for an examination in company law and "in many instances a qualified professional accountant is more in touch, day by day, with company law than is his opposite number in the legal profession." The nearest case in point would appear to be that of the chemist vending to the public a patent medicine originally prescribed by a physician. Fortunately, as we have seen, the professional governing bodies do not accept that this is the proper way to conduct their professional business.

Liability to Third Parties for Negligent Accountancy

WE commend to our readers the very full examination in the *Law Quarterly Review* for April of the Court of Appeal decision in *Candler* v. *Crane Christmas & Co.* [1951] 1 T.L.R. 371 that a third party who had invested money in a company, on the faith of accounts which had been negligently and erroneously prepared by professional accountants, could not recover damages from the accountants. *McAlister and Donoghue* v. *Stevenson* [1932] A.C.1 was held not to apply. DENNING, L.J., dissented on the ground that there was a special proximity between the third parties and the accountants which gave rise to a duty of care. The comment, at p. 176, touches on the possibility of arguing that solicitors may be liable in analogous circumstances, with special reference to the American case of *Ultramares Corporation* v. *Touche* (1931), 255 N.Y. Rep. 170, which COHEN, L.J., cited in *Candler's* case as support for the decision that there must be one rule for defective chattels and another for defective statements. In addition to this full note, an extremely able article on the same subject by W. L. MORISON, Ph.D., is to be found in the *Review*, at p. 212. By a coincidence, he wrote it before the report of the *Candler* case was published.

The Court of Appeal

STATEMENTS by learned judges on the subject of their own courts are of particular interest to lawyers who practise before them, in so far as they throw a glimmer of light on their method of approach to the daily problems placed before them. Lord Justice COHEN, in his address to foreign lawyers at Cambridge on 12th July, 1950, now published at p. 3 of the recently published 1951 volume of the *Cambridge Law Review*, said: "Some of my colleagues look at the papers before the hearing in order to get an idea of the points at issue; others think that it is better not to do so in order to avoid any risk of prejudicing one's mind before hearing counsel's arguments; but whichever course we may individually adopt counsel for the appellant has a completely free hand, subject, of course, to the risk of interruption by the members of the court, in presenting his case as he thinks best in the interest of his clients." The MASTER OF THE ROLLS, in two lectures delivered before the University of London in 1950 and now published by the University (Athlone Press, 2s. 6d.), said, as Lord Justice Cohen said at Cambridge, that the pressure of work was such that it was impossible to reserve as many judgments as they would like. He said that it was far easier to be long-winded than short on an extempore judgment, and that the Rent Acts and the tax legislation invite "the almost boundless resources of human ingenuity to find means of evading ('avoiding' is the politer word) Parliamentary intentions."

Road Safety

"SINCE 1939 motor vehicles have killed just about as many people in Great Britain as did German bombs during the whole war," said Professor A. L. GOODHART, K.B.E., K.C., President of the Pedestrians' Association, at its annual meeting on 16th April. The Association, he said, could fairly claim to have played a leading part in making the public more aware of the need for action. "We have insisted," he continued, "that severer penalties, especially the suspension of driving licences, is the only practical way to stop the reckless and selfish driver. I am glad that the Home Secretary has said that he is surprised at the leniency of some of the sentences imposed by magistrates for certain motoring offences, including dangerous driving. The Lord Chief Justice, when addressing magistrates, has expressed the same view." Professor Goodhart argued that the Oxfordshire experiment in the use of plain clothes patrols, which had been followed by a marked reduction in the number of road users killed and injured, showed that something could be done to stop dangerous driving. "It is ridiculous to suggest that nothing more can be done than the issuing of plaintive appeals that drivers should be more courteous." He urged that all owners of motor vehicles should be forced to put their vehicles in a safe condition. If the law were altered so that a dangerous vehicle was automatically kept off the road for six months it would soon be found that the owner would be careful to have it properly repaired. If a car was too old to be made safe it ought to be scrapped. VISCOUNT MAUGHAM, P.C., said that the behaviour of a large number of drivers was most unsafe, improper and unfair to pedestrians. "If we can get the feelings of the public aroused on these matters we shall have gone a long way towards diminishing the toll that is exacted by inconsiderate driving."

Nottingham Incorporated Law Society

THE seventy-sixth annual report of the proceedings of the Nottingham Incorporated Law Society states that the Society now consists of 176 members; 9,211 copies of the Society's Conditions of Sale were sold during the year as against 8,855 copies during the previous year; 175 Income Tax Apportionment Forms were sold during the year as against 50 in the previous year. The report draws the attention of all solicitors who act for trustees in bankruptcy to the provisions of ss. 56 (3) and 83 (3) of the Bankruptcy Act, 1914, and rr. 108A and 109 of the Bankruptcy Rules, 1915. These provisions are peremptory and failure to observe strictly the very stringent conditions which are laid down in the Act and Rules will result in the solicitor concerned failing to recover any costs, including conveyancing costs, for work carried out by him.

INVESTMENT CLAUSES

THE changes in the law of the State of New York as to trustee investments, particulars of which were published in May of last year, led to correspondence in the leading newspapers not only as to trustee investments generally, but also as to the drafting of investment clauses. *The Times* drew attention to the importance of clarity in an investment clause in its City Notes (30th May, 1950).

When a trustee desires to invest trust funds or to make a change of investments, it is likely that he will consult his stockbroker, in which case the stockbroker will before proffering any advice wish to refer to the investment clause in the trust instrument to see what quoted investments are authorised investments for the purposes of the trust. Examination of the trust instrument is in itself an unavoidable nuisance, but nothing to that which occurs if the stockbroker is unable to decide what the investment clause means. One should not have to consult a lawyer every time an investment is to be made. In its operation the investment clause ought to be clearly intelligible without reference to legal text-books, both to the lay reader and to the stockbroker, and if it is not so intelligible, then usually the draftsman is to blame, although on occasions the complexity of his instructions renders simplicity or conciseness impossible.

The fact that an investment clause is unduly restrictive or is illogical in its restrictions or is otherwise so framed as to make investment of the trust fund somewhat of a problem is not the fault primarily (if at all) of the draftsman but of the settlor or testator; nevertheless when taking instructions for a settlement or will, one should think of the practical effect of the provisions desired by the settlor or testator, point out possible difficulties and endeavour to frame, with his approval, provisions which carry out all that in substance is required in a manner which reduces to a minimum possible future difficulties for the trustees. Take, for example, an investment clause made some years ago authorising investment in trustee securities or debentures of public utility companies (as defined) and including a proviso that no investment showing a yield of less than 4 per cent. per annum at the time of purchase should be acquired; having regard to the level of prices at the time, such a proviso may have seemed sound, but what of the time during Mr. Dalton's reign as Chancellor of the Exchequer when no Government security or utility debenture showed a 4 per cent. yield? Perhaps also the prospects of nationalisation of public utilities and the effects of such nationalisation did not receive the consideration which events of the last few years have shown as desirable.

Where a trust is likely to continue for some long time one should remember that time can make nonsense of a provision designed in relation to present circumstances. For that reason restrictions upon the investment powers of the trustees must be framed so that, while giving effect to the intention of the settlor or testator, there should be the minimum risk of circumstances arising in which the existence of the restrictions is positively harmful to the beneficiaries as a whole.

There is, of course, a great deal to be said for the "prudent man rule," the principle of which is that trustees should be empowered to invest in any or every kind of investment which "men of prudence, discretion and intelligence" would acquire for their own account, considering the probable income as well as the probable safety of capital. It is, of course, open to any settlor or testator so to provide, but such a provision imposes upon trustees a heavy measure of responsibility which private trustees might well be unwilling to bear; it also leaves out of account the fact that an investment suitable for an individual is not necessarily suitable for a trust, where income and capital require careful segregation and it is not right to risk capital to attain increased income. Institutional trustees who have a wide knowledge of the investment market and can be fully relied upon to make investments which are in the best interests of every class of beneficiary to an equal degree may obviously be given a wider measure of freedom in investment than private trustees who, with the best will in the world, have not the necessary specialised knowledge.

The fundamental principle underlying investments made out of trust funds, as indicated in the preceding paragraph, is that, unless the intention of the settlor or testator is otherwise, they should be in the best interests of every class of beneficiary to an equal degree. For this reason it is clearly right in the view of the writer that the investments authorised by law for the investment of trust funds should be limited to prescribed types of security which will in all likely circumstances avoid inequity between one class of beneficiary and another. However safe an investment may be it must be remembered that a company is not concerned as to the application of income in the hands of its members and need not take into account the fact that some particular action (e.g., a distribution of specific assets in specie) may redound most unfortunately to the detriment of a particular class of beneficiary under a trust. Perhaps a stockbroker would in the past have regarded some of the "blue chip" investments as eminently suitable for trustee investments, but nationalisation has had serious and unlooked-for effects upon trust holdings of investments (including many coming in the "blue chip" class). A trustee in making investments must be very careful, although investment is much more easy where the nature of the trust is such that the primary concern of the settlor or testator is to provide income for a life tenant and the maintenance of capital is of less importance. While it is always open to the settlor or testator to authorise additional investments it is thought that the classes of investments authorised by law should not be broadened to any substantial degree beyond those at present authorised.

One important point arises out of the foregoing. In considering whether a particular receipt is for the purposes of a trust to be regarded as capital or income, the law is logical in theory and reasonably clear, but nevertheless it is arbitrary and in many cases inequitable in its results. Nationalisation has brought this problem to a head and it is surprising that there has not been more comment on this point, coupled with agitation for reform. Consider, for example, the following position:—

(*a*) The issued capital of a company is £150,000 in ordinary shares of £1 each.

(*b*) The actual net worth of its undertaking and assets (after deducting liabilities) is £300,000.

(*c*) Part of its undertaking and assets is nationalised and compensation of £200,000 paid.

(*d*) The company proposes to carry on the un-nationalised portion of its undertaking but has sufficient working capital without the greater part of the compensation payment, which it desires therefore to return to its shareholders.

Subject to the provisions of its articles of association the company can achieve its desired result by (*inter alia*) (*a*) a reduction of capital approved by the court, (*b*) reconstruction or (*c*) payment of dividend out of the capital profits arising

on the realisation of the nationalised portion of its undertaking and assets or out of accumulated profits. So far as the individual shareholder is concerned any one of these three methods can produce a result identical in effect (tax considerations excepted) but as between tenant-for-life and remainderman under a trust, in the absence of some provision in the trust instrument affecting the position, the results can be enormously different, since (*a*) would give rise to a receipt which would rank as capital and enure for the benefit of the remainderman, (*c*) would give rise to a receipt which would rank as income and be payable to the tenant-for-life, and (*b*) might have either result according to the form in which the reconstruction was carried into effect. So long as the law remains unchanged it must be remembered that such circumstances can arise and in appropriate cases a suitable provision should be inserted in the trust instrument to cover the position so far as possible. The exact form of any such provision must, of course, depend upon the extent to which it is felt desirable to make rules as to what shall or shall not be treated as income or to vest in the trustees a duty or discretion to apportion receipts as between capital and income in some manner other than that in which the receipts would normally have to be apportioned. It would, of course, be possible to vest such a duty not in the trustees themselves but in a reputable firm of accountants, in which case authority could be given to make adjustments as between capital and income (i.e., to allow for the effect of purchases or sales cum or ex dividend or to make provision for amortisation in the case of income derived from wasting investments) as may be thought fit.

If it is intended to give to the trustees unrestricted power of investment care should be taken to make sure that this power is clear and unambiguous. There is considerable authority for the proposition that investment clauses should be strictly construed and should not be construed as authorising investments other than those authorised by law for the investment of trust funds unless an intention to that effect is clearly and unambiguously shown. The words "in or upon such investments as to them may seem fit" may seem at first sight clear and unambiguous but nevertheless there was sufficient doubt as to their meaning and effect to necessitate an application to the court (*Re Harari's Settlement Trusts* [1949] 1 All E.R. 430) and the result in that case might possibly have been different if other provisions of the settlement in question had suggested the narrower interpretation as correct. Here is a case where too few words may leave the position in doubt and it would seem desirable to make the matter quite clear by using the common, although prolix, wording "in the subscription or purchase of or at interest upon the security of such stocks, funds, shares, securities or other investments of whatsoever nature and wheresoever and whether involving liability or not as the trustees shall in their absolute discretion think fit to the intent that the trustees shall have the same full and unrestricted powers of investing and transposing investments in all respects as if they were absolutely entitled thereto beneficially" or, if shorter wording is required, "in such stocks, shares, securities or investments of whatsoever nature (whether or not authorised by law for the investment of trust funds) as the trustees in their absolute discretion may think fit."

If it is intended to restrict the trustee's powers of investment it is desirable to set out specifically what investments are authorised rather than to give a wide general power of investment cut down by limiting provisos; this will make the investment clause more convenient for the lay trustee or the stockbroker advising him. The nature of the authorised investments is, of course, entirely a matter for the settlor or testator, but it is important that any possible future difficulties which might arise should be made clear so that he can consider whether to alter his instructions.

Finally, it is suggested that the settlor or testator, and (where appropriate) the lay trustee, be encouraged to let his stockbroker have a sight of the draft trust investment before its execution so that the stockbroker can for his part advise on the investment position. Investment is a specialist matter and therefore the specialist should be consulted.

J. W. M.

Costs

APPEALS—VIII

ANY consideration of the costs relating to appeals would be incomplete without some reference to costs in connection with appeals to the Judicial Committee of the Privy Council, and we will now give our attention to these costs.

The constitution and functions of the Judicial Committee were laid down in the Judicial Committee Act, 1833, whilst general directions for procedure are regulated by rules made under the authority of the Appellate Jurisdiction Act, 1876. The rules at present in operation are the Judicial Committee Rules, 1925, which came into effect on 1st January, 1926. These rules laid down the practice and procedure to be followed in connection with appeals to the Judicial Committee, and contain, in Pt. I of Sched. C thereto, a scale of fees to be allowed to agents conducting appeals before the Judicial Committee.

It may be noticed here that the appeals with which solicitors are mainly concerned are appeals from the courts of British dominions, colonies, provinces, states or possessions overseas, except in so far as His Majesty's prerogative to hear appeals from the courts of those dominions, etc., has been surrendered, although the jurisdiction of the Judicial Committee, in fact, extends beyond the hearing of such appeals. Thus, the Judicial Committee will hear appeals from ecclesiastical courts and in connection with other matters, but we are concerned at the moment with the ordinary appeals from the courts of the dominions, etc.

Provision is made in the rules for appeals *in forma pauperis*, and a person wishing to appeal in this form must apply by petition supported by an affidavit that he is not worth more than £25 apart from his wearing apparel and the value of the subject-matter of the appeal. If his petition is granted then he is relieved from paying any of the Council Office fees, nor will he be required to put up security for the respondent's costs. It should be noticed that the Legal Aid Scheme can be applied to proceedings before the Judicial Committee of the Privy Council (see Pt. I of Sched. I to the Legal Aid and Advice Act, 1949), although it is to be noticed further that Sched. III to the Act, which provides for the remuneration of persons giving legal aid under Pt. I, whilst furnishing directions as to the fees to be allowed to counsel and solicitors in connection with proceedings in the House of Lords, the Supreme Court and the county courts, makes no mention of the remuneration of counsel and solicitors in connection with appeals to the Judicial Committee of the Privy Council. However, legal aid in connection with appeals to the Judicial Committee of the Privy Council is not yet available, and when

it is, then, no doubt, directions will be given as to the fees to which counsel and solicitors will be entitled.

The documents to be placed before the Judicial Committee in connection with an appeal from the court of a British dominion are a copy of the record of the proceedings before the court, the judgment of which is the subject of the appeal, a case setting out the appellant's contentions, and a further case setting out the argument and contentions of the respondent. The cases of the appellant and the respondent are normally prepared in this country, but the record may be compiled and printed either abroad or in England. In the latter case they are made up and printed by the solicitor for the appellant, whilst in the former case the registrar of the court below, the judgment of which is the subject of the appeal, will arrange for the printing of the record and the transmission of sufficient copies thereof to the Privy Council.

The only costs, however, which are taxed in this country are the costs incurred here, so that where the printing is done abroad, then the costs thereof will not form a part of the costs which are compiled and taxed by the solicitor of the successful party in England.

The costs in connection with appeals to the Privy Council are wholly within the discretion of the Judicial Committee (see the Judicial Committee Act, 1833), and here again the costs may be awarded against a successful appellant in cases where such a direction is warranted.

So far as the scale of costs is concerned, it will be found, on examination of Pt. I of Sched. C to the Judicial Committee Rules, 1925, that the scale of solicitors' costs applicable in respect of Privy Council appeals bears a marked similarity to the scale of costs applicable to appeals to the House of Lords. Thus, copies are allowed at the rate of 6d. per folio, the fee for drawing documents is 2s. per folio, and the normal fee for attendances is 10s. So far as counsel are concerned, also, the allowances in respect of Privy Council appeals are somewhat similar to the fees allowed in respect of House of Lords appeals. A refresher fee of ten guineas is allowed to counsel in respect of each day in which the appeal is in the paper, where the appeal exceeds one day's hearing, irrespective of the time occupied each day. One point of difference may be noticed here, however, namely, that the refresher fee of ten guineas applies to each counsel, so that the junior counsel receives the same refresher fee as the senior counsel. Further, counsel's clerk's fees are allowed at the rate of 5 per cent. of the counsel's fee, where the latter is in excess of five guineas.

The solicitor's profit charges may be increased by 50 per cent. pursuant to an Order in Council, thus bringing the scale into line with solicitors' fees in other branches of the law.

Now as to the actual costs of an appeal to the Privy Council. Again, we have from time to time been asked to express an opinion as to the probable costs of an appeal, but again, it can only be said that it is impossible to lay down any hard and fast rule which will provide a general measure for all cases. As in other branches of solicitors' activities there are certain fees which are dependent on the length of the documents involved, and certain fees which are within the discretion of the taxing officer, although, as in the case of House of Lords appeals, the number of discretionary fees is small and in any case the total will not amount to more than a few guineas. So far as the disbursements are concerned, these will vary principally according to the fees to be paid to counsel who will conduct the appeal before the Judicial Committee; and will also depend on whether or not the record is printed in the United Kingdom or abroad.

Unless leave to appeal to the Judicial Committee has been granted by the lower court in the dominion, etc., concerned, leave to do so will have to be obtained from the Judicial Committee, and this will be done by petition. A fee of 10s. is allowed as instructions for the petition for special leave to appeal to the Judicial Committee, and, unless the petition is refused, this fee will have to cover the work involved in perusing the necessary documents, since if the appeal goes on then the solicitor will be allowed a fee at a later stage for perusing the record, as most of the documents which the solicitor will have to peruse in connection with the petition for special leave to appeal will be included in the record. A fee of 2s. per folio will be allowed for drawing the petition, and a similar fee for drawing the affidavit in support. The petition will be settled, normally, by counsel, and 6d. per folio will be allowed for copying the petition for counsel to settle, whilst counsel will be allowed a maximum fee of five guineas (clerk's fee 10s. 6d.) for settling the petition. The affidavit in support is not normally settled by counsel since it is a more or less formal document.

The allowance for attending to be sworn to the affidavit is 10s., and a similar fee is allowed for attending to lodge the petition and the affidavit at the Privy Council Office. Where the petition is opposed then a copy will be made for the respondent at a fee of 6d. per folio, and 10s. will be allowed for serving it.

Normally, the petition for special leave to appeal will be supported by counsel, and a maximum fee of ten guineas is allowed to him for this. He will be provided with a copy of the petition and of the affidavit and any other documents necessary to enable him to support the petition, and for all of these a fee of 6d. per folio will be allowed for copying. Counsel is also entitled to a conference with the instructing solicitor, for which he will be allowed five guineas, whilst the solicitor will be permitted to charge a fee of £1 for attending such conference.

In due time, a summons to hear the petition will be served on the instructing solicitor by the Privy Council Office, and a copy of this will be made for counsel at a charge of 6d. per folio. The solicitor's fee for attending at the hearing of the petition for special leave is £1 6s. 8d. After the petition is heard a draft of the order will be served on the instructing solicitors, and a fee of 10s. is allowed for attending at the Privy Council Office to pay the Council Office fees, and a similar fee will be allowed for perusing the draft order. Nothing more is allowed for attending at the Privy Council Office for the purpose of lodging the draft order duly approved, nor for attending when the final order is delivered, but the instructing solicitor will be allowed a fee of 10s. for writing to the agent with the original order and a copy for use.

This concludes the costs in respect of a petition for special leave to appeal. Normally, where the petition is allowed and the appeal goes on, the costs in respect of the petition for special leave will form part of the costs of the appeal, and will be included in the total bill of costs of the English solicitor.

We will continue our consideration of the costs in respect of Privy Council appeals in our next article, when we will endeavour to give some indication of the costs involved in a representative case.

J. L. R. R.

MR. T. R. DOOTSON

Mr. Thomas Robert Dootson, solicitor, of Leigh, Lancashire, has died at the age of 86. Admitted in 1895, he had been clerk to Leigh divisional and borough justices since 1923.

MR. F. ROWLAND

Mr. Frank Rowland, solicitor, of Clayton Le Moors, Lancashire, coroner for twenty-two years until his retirement last year, died recently, aged 75. He was admitted in 1900.

A Conveyancer's Diary

HOW TO REVOKE AN APPOINTMENT AS EXECUTOR

THE following appears in Prideaux's Precedents in Conveyancing (23rd ed., vol. 3, p. 804) as a form of codicil revoking the appointment of an executor or trustee of a will and appointing a new one in his place :—

"1. I revoke the appointment contained in my Will whereby I appointed C D to be an executor and trustee thereof and also the legacy of £ thereby bequeathed to him and declare that my Will shall take effect as if he were dead.

2. I appoint X Y of, etc., to be an executor, etc."

Re Wray, reported at p. 107, *ante*, shows how inconvenient this form may be.

By her will made in 1945 the testatrix appointed three persons, including G, to be her executors and trustees. After certain dispositions not material for the present purpose, she left her residuary estate upon the usual trusts for sale and conversion and upon trust as to the proceeds of sale, in the events which happened, for C absolutely, provided that if C should die in the testatrix's lifetime (as he did) the same should be dealt with as if C had survived her and "be transferred to his personal representatives and form part of his estate and be treated as directed in his will."

Later in 1945, C made his will and gave his residuary estate on trust to pay the income to his wife G, for her life, with various remainders over. In November, 1948, the testatrix made a codicil to her will in the following terms :—

"I revoke the appointment of G in my will as executrix and direct that my said will shall take effect as if her name was omitted from my will and as if she were dead."

C predeceased the testatrix, who herself died in 1949. What, in these circumstances, was the effect of the codicil on the life interest conferred on G by C's will in that part of C's residuary estate which represented the testatrix's residuary estate? Vaisey, J., held that G had been excluded by the codicil from taking any benefit under the testatrix's will, and was thus deprived of the interest in the testatrix's residue purported to be given her by C's will. The Court of Appeal reversed this decision.

The first step in unravelling the tangle is to analyse the precise effect of the testatrix's residuary bequest. The Master of the Rolls pointed out that *Re Cousen's Will Trusts* [1937] Ch. 381 had laid it down that, notwithstanding the use of such a formula as "and form part of his estate," the result of such a provision, in the present case, had been to make C's residuary legatees take the testatrix's residuary estate as direct beneficiaries, not of C, but of the testatrix. That case is a difficult one, and in certain circumstances its operation on the combined limitations of more than one will can be very complicated, but in the simple case its effect can be stated as follows. A gift upon trust for X, or if he should die in the testator's lifetime for X's personal representatives as, or so as to form, part of his estate, is construed as a gift to X or, if he predeceases the testator, to the persons who become entitled on X's death to his estate. If the person who becomes entitled to X's estate on his death is Y, the gift is thus construed as a gift to X or, if he predeceases the testator, to Y.

Applying this principle to the facts in *Re Wray*, the testatrix's residuary gift had to be construed as a trust for C, or if he should predecease the testatrix, for G. But the testatrix, in revoking by her codicil the appointment of G as executrix, had directed her will to have effect "as if G's name were omitted from my will and as if she were dead," and *prima facie* this last provision indicated (as the learned judge at first instance felt) that G's name had to be omitted from the residuary trusts which, by reference, had become incorporated in the testatrix's will. As I have already said, the Court of Appeal came to a different conclusion, for a variety of reasons which it is not altogether easy to piece together from the three judgments, but of which one, at any rate, appears to have a general application.

Two cases were relied upon by G as supporting the view that the revocatory clause of the codicil was limited in its effect, and these cases, it was felt, showed a disposition on the part of the court in cases of revocation in codicils to depart somewhat from the general rule of construction whereby, if possible, effect must be given to all the words used in the document under examination, and to confine such revocatory clauses to the particular subject-matter with which they are introduced to deal. The first of those cases was *Re Percival* (1888), 59 L.T. 21, in which a testatrix by her will gave a watch to A and a brooch to B, and by a later clause gave a legacy of £200 to A, and by a codicil in which she recited the gifts of the watch to A and the brooch to B revoked the said legacies in their favour, and declared that her will should be construed in all respects as if the names of A and B had not been inserted therein, and in all other respects confirmed her will. In the other case, *Re Freeman* [1910] 1 Ch. 681, there was an appointment by will of three persons to be executors, including one N, and a pecuniary bequest to each proving executor, and after other dispositions a gift of residue to three named persons, one of them being N. By a codicil the testator, after reciting the appointment of N as an executor and the pecuniary legacy to him for his trouble in acting as such, revoked the appointment and the legacy, appointed F to be executor in N's place, and declared that the will should be construed as if the name of F were inserted in the will throughout instead of the name of N, and in all other respects confirmed the will. In both these cases the court came to the conclusion that the revocatory clause, construed in its context, related and had been intended to relate only to the matter with which it primarily dealt, viz., in the former case the specific bequests and in the latter case the appointment as executor, and that all other dispositions of the respective wills took effect undisturbed by the codicils.

It is to be observed that in both these cases the words of revocation were introduced by a recital, and these recitals were, doubtless, strong indications that the following words had been intended to deal only with the matters referred to in the recitals. In *Re Wray* there was no introductory recital, the words of revocation being *prima facie* perfectly general, and to that extent it would appear that the two earlier decisions have now been stretched a little further. But in these construction cases it is always difficult to draw the line between one set of circumstances and another, similar but not identical, and to have decided that the absence of a recital in *Re Wray* put that case on the other side of the line from the earlier cases would have been a cruel refinement so far as G was concerned. It may further be noted that if the revocatory clause had merely directed that the will was to take effect as if G's name were omitted from the will, G's interest in the testatrix's residue would not have been affected, since this interest did not depend on her name being mentioned in the testatrix's will, but only in C's will; it was the further direction that the will was to take effect

as if G were dead that introduced the difficulty. Yet on the face of it the two phrases "as if her name was omitted from my will" and "as if she were dead" appear (grammar apart) to be completely tautologous.

The result of this case is satisfactory as having tended to carry out the testatrix's probable intention, but it should have another effect. This is the season of spring cleaning, and I suggest that the books of precedents should be taken down from their shelves and a note of *Re Wray* placed against every form of revocation of an appointment which, after making the required revocation, goes on to direct that the testator's will is to be construed, or take effect, on any hypothesis. Well drawn wills nowadays begin with an appointment of executors, the persons appointed being defined as the testator's trustees. If X is appointed an executor and trustee by such a clause, this clause, and the clause or sub-clause whereby he and his fellow executors are given a legacy for their trouble, are the only parts of the will in which X's name in his capacity as executor will be mentioned: in all other places his identity as such will be merged in the general description of "trustees." What, then, is the purpose of a revocation clause which, after specifically revoking X's appointment, and his executor's legacy if that is applicable, continues with a direction that can add nothing to the specific revocations, and can only cast doubt on the validity of other provisions of the will which have nothing to do with the office of executor? If the answer is "nothing," I have made my point.

"A B C"

Landlord and Tenant Notebook

BOUNDARY ADJUSTMENT

THOSE who have had occasion to consider the effect of *Dunn* v. *Fidoe* [1950] 2 All E.R. 685; 94 SOL. J. 579, and *Howkins* v. *Jardine* [1951] 1 All E.R. 320; 95 SOL. J. 75 (see 95 SOL. J. 150) may have asked themselves whether any solution to the difficulties dealt with and visualised in such cases might not be afforded by applying the boundary adjustment provisions of s. 87 of the Agriculture Act, 1947. But, as far as the two decisions are concerned, it is soon apparent, when one comes to read s. 87 of the Act, that it provides no solution by which a holding consisting of a farm and something else—an inn was suggested, and so was a factory—could be compulsorily divided into two holdings. For the provisions operate only when (in the interests of the full and efficient use of land for agriculture) adjustments are to be made in the boundaries between two agricultural units, or when agricultural units are to be amalgamated; and a glance at the definition of "agricultural unit" in s. 109 (2) shows that the Legislature has not seen fit to get rid of such difficulties by breaking up awkwardly constituted properties in this way. Adjustment of boundaries between, and amalgamation of properties consisting of, land occupied for agricultural purposes can be made the subject of a scheme under s. 87; and at the most land which ought to be farmed, though it is not being so used at the moment, may be included.

The "Notebook" is, of course, mainly concerned with the question of what may happen when land within such a scheme is let, but it is necessary to give an outline of the somewhat revolutionary measure as a whole.

Section 87 (1) entitles the Minister of Agriculture and Fisheries, when it appears to him that "it is for consideration whether in the interests of the full and efficient use of land for agriculture adjustments should be made in the boundaries between agricultural units in the area, or whether any such agricultural units or parts thereof should be amalgamated with other agricultural units or parts thereof", to refer the matter for consideration to the Agricultural Land Commission. On the authority of *Liversidge* v. *Anderson* [1942] A.C. 206 one can say that there can be no argument on the question whether it does appear to the Minister that such a question deserves consideration, i.e., whether the efficiency of agriculture is *prima facie* impaired in a particular area by what is, I understand, departmentally called "fragmentation."

The first task of the Commission (subs. (2)) is to have the area inspected and to afford an opportunity to persons "appearing to them" to be likely to be affected to make representations to them. They then make a report to the Minister stating whether they think it is desirable to promote a scheme for securing adjustments or amalgamations, and, if they do, setting out a provisional scheme. Thereupon the Minister directs the Commission to prepare a final scheme for submission to and confirmation by himself.

Having prepared the final scheme the Commission (subs. (4) and Sched. XII) advertise the fact in local newspapers two weeks running, naming a place where a copy of the scheme and an illustrative map can be seen. The advertisement must also indicate the time (at least twenty-one days from first publication) within which representations are to be made and how they are to be made to the Commission. Notices must also be served on every owner, lessee and occupier (except tenants for a month or less period than a month) stating the effect of the scheme and telling them when and how to make representations.

This, of course, affects tenants, except tenants for a month or less period, who must be few and becoming fewer since s. 40 of the Act, now s. 2 of the Agricultural Holdings Act, 1948, converted any tenancy for use as agricultural land which was less than a yearly tenancy and was made on or after 1st March, 1948, into a yearly tenancy, unless the letting was approved by the Minister before the agreement was entered into.

The usual public local inquiry follows (Sched. XII, para. 4) and the scheme, as it stood or modified, is then submitted for confirmation (para. 5) and a copy laid before Parliament and the fact of confirmation published and notified.

The Commission are entitled to demand information from any person as to owners and occupiers of land for the purposes of enabling them to carry out the functions outlined above (s. 87 (5)), a maximum penalty of £10 and £5 a day being the punishment for failing to supply such information without reasonable excuse or not doing so within a reasonable time; and it is the Commission's duty to secure the carrying out of the scheme.

This, if necessary—i.e., if the Minister is satisfied that it is necessary, the carrying out being hindered by failure to reach agreement about the disposal of land or of interests in land—may be done by compulsory purchase of the land in question. There is no provision for compulsory hiring. If, when a scheme has been in operation for seven years, an "owner" finds that purchase of his land has not "become obligatory," he may serve a notice on the Minister (not the Land Commission) under subs. (8), stating that he desires to avail himself of its provisions, and if within three months of that event the Minister has not either made purchase

obligatory or offered to buy the land at a price to be determined, failing agreement, at the price which would be determined in the case of compulsory purchase, the interest of the owner is to be excepted from compulsory purchase.

"Owner" in the above subsection (*a*) means any person, other than a mortgagee in possession, who is entitled to dispose of the fee simple, whether in possession or reversion, and (*b*) *includes* a person holding or entitled to the rents and profits of the land under a lease or agreement, the unexpired period whereof exceeds three years.

This and the already mentioned provision for notifying lessees holding for more than a month that a final scheme has been prepared are the only express references to tenants in that part of the section which deals with preparation and confirmation of the scheme by Commission and Ministry, and it is clear that in the event of those affected proving uncoöperative it is proposed to deal primarily with freeholders. The last subsection (subs. (10)) reflects this view: "Where for the purposes of a final scheme under this section the landlord of a holding gives notice to quit part of the holding, then unless (*a*) under s. 27 of the Agricultural Holdings Act, 1923, the tenant accepts the notice to quit as a notice to quit the entire holding, *and* (*b*) in consequence of the tenant so doing he becomes entitled under s. 30 of this Act to compensation for disturbance in respect of the entire holding, the tenant shall notwithstanding proviso (*a*) of subs. (2) of the said s. 30 not be entitled to any compensation under that section in excess of the loss or expense referred to in the said subs. (2) proved to have been suffered or incurred by him."

The Agricultural Holdings Act, 1923, s. 27, conferred the right to give notice to quit part of a holding when part was required for one of a number of purposes specified, at the same time entitling the recipient to give notice, within twenty-eight days, electing to treat the notice to quit part as notice to quit the whole; the Agriculture Act, 1947, s. 30, contained provisions for compensation for disturbance, abolishing the former condition precedent of at least some loss or expense. Both were repealed by the Agricultural Holdings Act, 1948, and the law is to be found in s. 31 (1) of that Act, specially devoted to legalising a notice to quit part which is given for boundary adjustment or unit amalgamation purposes, and s. 34 (4), repeating the limitation to loss and expense actually incurred in cases in which notice to quit part has been given for such purposes. It would seem that the tenant is not to be allowed to make a good thing out of the Ministry's rearrangement of the district.

Apportionment is likewise specially provided for in the Agricultural Holdings Act, s. 33 (1), depreciation of the value *to the tenant* of the residue caused by the severance *or* by the use to be made by the part severed being a factor. One might expect, in the case of a carefully thought out and fought out scheme, that the outcome would be something like all-round enhancement of values; but this part of s. 33 (1) appears modestly to admit the possibility, in an individual case at all events, of a different result.

As far as I am aware, so far only one scheme has been prepared, affecting an area near Yetminster where a number of (figuratively speaking) embattled farmers attended the public local inquiry on 21st February and defended "fragmentation" as it existed. I understand that the final report is now under consideration.

R. B.

HERE AND THERE

MUSICAL CHAIRS

EVER since Lord MacDermott went back to Northern Ireland the merry airs of musical chairs have not ceased to ring in the Law Courts and the Temple and the fun grew even jollier when the Law Officers of the Crown joined the party. It is an innocent little pastime far removed from the money-mindedness that may have reared its ugly head in similar speculations once upon a time, for, the fiscal fantasia being what it has become, a few nominal thousands of salary more or less have but a remote and incalculable effect on the actual standard of living of the theoretical recipient and as often as not it may well be a case of the higher the poorer. That leaves only the disinterested intellectual exercise of studying form for its own sake as the competitors file past, and that isn't quite as simple as the layman might suppose. Because Mr. Justice Lien may have done very nicely in the King's Bench Division it by no means follows that he will equally distinguish himself or even earn honourable mention in attempting to discharge the very different functions of a lord justice in the Court of Appeal, where his talents, say, for neat, lucid fact finding, or for bringing out the best in witnesses or juries would have no scope at all, but, contrariwise any shakiness in his grasp of legal principle would have far more spectacular results over a far wider area than in a court of first instance. While, sitting below, it is, of course, desirable to know a little law, provided you don't let your enthusiasm for it run away with your tongue, a good sound basis of common sense and knowledge of the world is still the better part.

LORD ASQUITH SUCCEEDS

WELL then, they did, after a perceptible pause, decide to fill Lord MacDermott's place among the Law Lords, despite the shrinking jurisdiction of the Judicial Committee, where they are likely to be less in demand than formerly. It will probably mean that individual Lords of Appeal will get more time away from sittings and hearings for the back-room library work of preparing their opinions, not usually compositions which can be dashed off in an odd half hour after tea. When you come to think of it, it is rather astonishing that in the Court of Appeal the lords justices are apparently expected to sit five full days a week in court. When are they supposed to do their paper work on those reserved judgments which are the fine flower and fruit of all their other labours? On this showing Lord Asquith (as he now is) should find his translation to the Lords welcome advantage in *otium* as well as in dignity. In the Upper House he joins his nephew the second Earl of Oxford and Asquith (already at five and thirty a seasoned peer of twenty-three years standing), the son of his eldest brother, a member of the Bar, killed on the Somme in 1916, and the grandson of his father, the first Earl, equally distinguished in his day as a statesman and a leader of the Bar, one of the small company who have blended the two careers to such good purpose as to combine distinction in the courts with the peak of the Premiership. Many are called; few are chosen for success in both; most in neither. The new Lord Asquith had the ground of a political career cut from under his feet by the decline and fall of the Liberal Party. He took the single path of the law and when he became a judge in 1938, he was the youngest in the King's Bench Division. He went to the Court of Appeal in 1946.

LAW AND POLITICS

THE latest step in the career of Sir Hartley Shawcross provides an instructive example of the topsy-turveydom of services in relation to salaries. When he started off as Attorney-General his basic salary was £4,500 augmented by brief fees on piece-work to something around £25,000 or £30,000. In 1946 his salary was pegged at his own request at £10,000.

Now he has migrated quite happily to the Board of Trade at £5,000 a year. There he will have a seat in the Cabinet and once there who knows where he may stop? On to the Foreign Office? On to Downing Street? The path is rough and uncertain and even the sure feet of Lord Simon stopped short of No. 10. Sir Hartley has covered a good deal of ground since he started studying for a medical career at Geneva. But the late J. H. Thomas told him "medicine and politics won't mix." We now know that they can sometimes, but the future A.-G. took the hint and tried the blend of law and politics instead, with so far very satisfactory results and many years to go. Incidentally, the present Prime Minister was called to the Bar in 1906 (as became the son of a solicitor) but he soon decided that he preferred to take his politics neat. His last professional address in the Law List was 3 Hare Court in 1912, with membership of the Home Circuit, nearly three lines of Kentish Sessions and the Mayor's Court.

RICHARD ROE.

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NOTES OF CASES

HOUSE OF LORDS

OMNIBUS SERVICE: POWERS OF LONDON TRANSPORT EXECUTIVE

Smith *v.* London Transport Executive

Lord Simonds, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott. 1st March, 1951

Appeal from the Court of Appeal.

The plaintiff had run a motor-omnibus service between Hitchin and Weston, Hertfordshire, without competition, for sixteen years when, in March, 1947, the London Passenger Transport Board gave him notice that they were about to apply for permission to run a service of their own on the route. On his lodging an objection, the board submitted to him a tentative timetable of their intended service, whereupon he lodged a further objection both with the board and with the Regional Transport Commissioner concerned. In the same year the British Transport Commission had been created by the Transport Act, 1947, and, in the following December, in exercise of their powers under the Act, the commission sealed a scheme whereby (by cl. 2) they delegated to the defendant body all their functions (*a*) relating to activities which they were empowered to carry on by virtue of the transfer of the undertaking of the London Passenger Transport Board to them, and (*b*) relating to activities which they were empowered to carry on solely by virtue of their powers under s. 2 (1) of the Transport Act, 1947, so far as those activities were carried on in connection with their activities under (*a*) or were ancillary to those activities. Also, in December, 1947, the Minister of Transport approved the scheme of delegation. By the Act of 1947, the undertaking of the London Passenger Transport Board became vested in the commission on 1st January, 1948, and in the same month, under s. 65 of the Act, the executive applied in respect of their intended new service to the licensing authority for the metropolitan area for "route approval." The licensing authority stated that they were "prepared to approve" the opening of the route on 18th February, on or about which date the executive accordingly began to operate their service. About 400 yards of the route was outside the "special area" defined by the London Passenger Transport Act, 1933. The plaintiff contended that, in operating the service, the executive were exceeding their statutory powers, since the route was outside the "special area" defined by the Act of 1933. He alleged that he had suffered damage through their operating the route, and claimed an injunction to restrain them from so doing, or a declaration that in so doing they were acting *ultra vires*. The executive contended that the service which they were operating was within their statutory powers to operate. By s. 65 (1) of the Act of 1947, a road service licence is not required under s. 72 of the Road Traffic Act, 1930, for "any passenger road transport service provided, whether under" certain schemes under the Act of 1947 "or otherwise"; but "route approval" is necessary.

LORD SIMONDS said that, on the first question, whether the British Transport Commission could themselves operate the service in dispute, the defendant executive said that the commission could do so both under the general authority of s. 2 (1) of the Act of 1947 and as successors of the London Passenger Transport Board under ss. 12 and 14, and in either case under s. 65 without obtaining a road licence. The plaintiff said that, on the true construction of the Act, none of those sections gave the necessary authority. In s. 2 there were to be found again and again examples of powers given which were necessary for the proper exercise by the commission of their functions, but which were not specifically or by implication given by later provisions of the Act. It must be concluded that the commission had power to operate that service under s. 2 (1). Clearly they had power to do so without obtaining a road service licence under the

Act of 1930, for there was no reason for narrowing down the plain meaning of the relevant words of s. 65 "provided, whether under a scheme under the preceding provisions of this part of this Act or otherwise, by the commission." The service in dispute was provided by the commission "otherwise" than under a scheme. They were therefore relieved from the necessity of obtaining a road service licence. As for the second question, whether the commission had delegated to the defendant executive their power to run the service, on the true construction of the scheme of delegation approved by the Minister of Transport under s. 5 of the Act of 1947, the executive, in his opinion, had that right, also over the 400 yards. The appeal failed.

The other noble lords agreed, except that LORD OAKSEY thought that the appeal should succeed in respect of the 400 yards. Appeal dismissed.

APPEARANCES: *Sir David Maxwell Fyfe*, K.C., and *G. R. F. Morris* (*Mawby, Barrie & Letts*); *Gilbert Paull*, K.C., and *J. P. Ashworth* (*M. H. B. Gilmour*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

EQUITABLE ASSIGNMENT: CONSIDERATION

***In re* McArdle**

Evershed, M.R., Jenkins and Hodson, L.JJ. 16th March, 1951

Appeal from Danckwerts, J.

A testator gave his wife a life interest in his estate and directed that the residue should be distributed between his four sons and his daughter in equal shares; the testator died in 1935, and in 1943 and 1944 his son M, who was living with his wife in a bungalow that formed part of the residuary estate, carried out repairs to the bungalow which amounted to £488; the money was paid by M's wife. On 30th April, 1945, the five children of the testator signed a document which was addressed to M's wife and was in the following terms: "In consideration of your carrying out certain alterations and improvements to the property known as . . . , we the beneficiaries under the will of [the testator] hereby agree that the executor . . . shall repay to you from the said estate when so distributed the sum of £488 in settlement of the amount spent on such improvements." The testator's widow died in 1948. In an action by M's wife against the testator's five children (who, with the exception of M, objected to the payment), Danckwerts, J., held that the document of April, 1945, was a valid equitable assignment and gave judgment for the plaintiff. The defendants appealed.

EVERSHED, M.R., said that the real question was whether the document of 1945 was an effective equitable assignment so as to pass to the plaintiff an indefeasible interest in a proportionate part of the residuary estate; if it were not, it must fail to give her a claim which she could litigate, since there was no consideration passing from her to support her claim. He (the learned judge) accepted the view expressed in Snell on Principles of Equity, 22nd ed., pp. 57–58, that if what was done amounted to a gift, complete and perfect, of a subject-matter which was an equitable chose in action, then there was no reason, in principle or in authority, why the donee should not take the benefit, just as he would if the giver gave him a pound note and put it into his hand; since the transaction was thus perfect, the question of consideration became irrelevant, for that was only necessary to support the assertion of a right to have made perfect something which was not yet perfect, for example, a contractual right. It was for the plaintiff to make out her case. She attempted to do so by producing the document of 1945. It seemed plain from its form that the transaction was neither complete nor perfect, which it was essential that a voluntary equitable assignment should be. The whole tenor of the document was quite contrary to the form appropriate to a completed gift. The plaintiff could, therefore, not succeed in the absence of consideration.

JENKINS and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. G. Strangman*, K.C., and *G. B. H. Dillon* (*Walmsley & Stansbury*, for *E. W. Marshall Harvey & Dalton*, Bournemouth); *H. J. Astell Burt* (*Eric P. Fullbrook & Co.*); *Wilfrid Hunt* (*Routh, Stacey, Hancock & Willis*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

HUSBAND AND WIFE SEPARATED UNDER SAME ROOF: OBJECTION TO WIFE'S GUEST

Davey *v.* Leonard

Somervell, Singleton and Birkett, L.JJ. 27th April, 1951

Appeal from Newport (Mon.) County Court.

The plaintiff's marriage having broken down as from 1946 he and his wife lived independently in separate parts of a house of which the husband was the tenant. In December, 1950, the wife was granted a decree absolute, the marriage having been dissolved on the ground that her husband had deserted her. In the spring of 1950 the defendant, the wife's brother, had come to live with her at her invitation in her part of the house. The husband, complaining that the brother had without his permission taken up residence at the house, of which he, the husband, was the rent-paying tenant, brought this action alleging that the brother was a trespasser. The county court judge dismissed the action, and the plaintiff husband appealed.

SOMERVELL, L.J., said that the arrangement between the former husband and wife involved communal use of the kitchen, and, when the husband and the brother met there, trouble arose over the use of the stove. It was argued for the husband that the wife was a mere licensee in the house of which he was the tenant, and that he could revoke that licence, whereupon the brother would become a trespasser. Where, as here, there were two households, *prima facie* that meant that the wife had exclusive control of that part of the premises in which she lived. Against that background there was evidence on which the county court judge could find as a fact that the rights of the former wife in her part of the house, where she lived separate and apart from her former husband, were similar to those of a tenant. She had exclusive occupation, and therefore the same rights as she would have had, had she been a tenant. There being evidence on which the county court judge could so find, the appeal failed.

SINGLETON and BIRKETT, L.JJ., agreed.

APPEARANCES: *A. G. Davies* (*Simmonds, Church, Rackham and Co.*, for *J. C. Llewellin & Co.*, Newport (Mon.)); *S. O. Olson* (*Frank Lewis & Son*, Newport (Mon.)).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

COMPANY: SHARE PREMIUM ACCOUNT: DISTRIBUTION: CAPITAL OR INCOME

***In re* Duff's Settlement; National Provincial Bank, Ltd. *v.* Gregson**

Harman, J. 21st March, 1951

Adjourned summons.

A company issued from time to time shares at a premium which it transferred to a share premium account, in pursuance of s. 56 of the Companies Act, 1948. In 1950 the company passed a special resolution to pay out of the share premium account two shillings and sixpence in respect of each fully paid share, and the court sanctioned this reduction. A number of shares was settled under several settlements of which the plaintiff bank was the trustee, and the bank asked the court to determine whether the money received in respect of the shares had to be treated as income or as capital.

HARMAN, J., said that before the coming into operation of the Act of 1948 it was well settled that the sums received by companies as a premium on the allotment of their shares ranked as profits available for payment of a dividend. Section 56 created a new class of capital of a company not being share capital, but not being distributable as income any more than any other capital asset. On a winding up, the share premium account would be returned to the shareholders as capital, and while the company was a going concern it could only be returned by following the procedure for returning any other capital asset to the shareholders. The share premium account represented a profit in the sense that the company had received for its shares more than their nominal value, but that profit was not distributable. A share could be described as a "bundle of rights" and, since the Act of 1948, one of the rights of shareholders was that the share premium account should be maintained inviolable except in so far as the section permitted distribution. When the share premium account was reduced in accordance with the section, every share was necessarily reduced in value. Therefore, although the share capital was not reduced, there was a reduction of capital. The section in fact produced a novel type of capital distributable only by the same process as share capital and having the quality of capital in the hands of both the company and those who received it as a result of a reduction petition.

APPEARANCES: *J. V. Nesbitt*; *R. H. Walton* (*Slaughter and May*); *H. Lightman* (*Peake & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

TRUSTEE: POWER TO APPOINT ADDITIONAL TRUSTEES: DONEE APPOINTING HIMSELF

***In re* Power's Settlement Trusts; Power *v.* Power**

Wynn Parry, J. 4th April, 1951

Adjourned summons.

A settlement made in 1939 provided that the power of appointing a trustee or new trustees of the settlement should be vested in the defendant during his life. By a deed of appointment dated 15th August, 1950, the defendant, who was tenant for life of the settlement, appointed himself as an additional trustee.

WYNN PARRY, J., said that if the only relevant statutory provision to be considered were subs. (6) of s. 36 of the Trustee Act, 1925, and if the matter were *res integra*, he would not have construed the subsection as excluding the donee of the power from the class of persons who could be appointed as trustees. The power given by subs. (6) referred to "another person or other persons"; these words, which were identical with the words of subs. (1) of s. 10 of the Trustee Act, 1893, had to be contrasted with the words used in subs. (1) of s. 36 of the Act of 1925, which were "one or more persons"; moreover, in subs. (1) there were added in brackets the words "whether or not being the persons exercising the power," which words were absent in subs. (6). If he (the learned judge) had been free so to do, he would have taken the view that subs. (6) which related to the appointment of additional trustees—a different subject-matter from subs. (1)—should be construed in the way he had already indicated, but he felt that, so far as that court was concerned, the phrase "appoint another or other persons" in subs. (6) could not be given a meaning different from that given by Kekewich, J., in *In re Sampson* [1906] 1 Ch. 435, to the same words in subs. (1) of s. 10 of the Trustee Act, 1893, where that learned judge concluded that the donee of the power was excluded from the class of persons capable of being appointed trustees. It was with reluctance therefore that he (Wynn Parry, J.) would declare that the deed of appointment of 15th August, 1950, was invalid and ineffective on the ground that, on the true construction of s. 36 (6) of the Trustee Act, 1925, the defendant had no power to appoint himself an additional trustee of the settlement.

APPEARANCES: *G. R. Upjohn*, K.C., and *M. Berkeley* (*Collyer-Bristow & Co.*); *Milner Holland*, K.C., and *T. A. C. Burgess* (*Woodcock, Ryland & Co.*, for *Preston & Redman*, Bournemouth).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

TRUSTEE: CLAUSE AUTHORISING CHARGE FOR PROFESSIONAL SERVICES: BYELAWS OF HOSPITAL: AMENDMENT REPUGNANT TO LAW AND UNREASONABLE

***In re* The French Protestant Hospital**

Danckwerts, J. 5th April, 1951

Adjourned summons.

The charter of 1718 which incorporated the French Protestant Hospital gave the governor and directors power to make "good and wholesome byelaws" and to amend them "provided always that the said byelaws . . . be reasonable and not repugnant to law." Byelaw No. 11 provided that no person should be eligible as director who received any emolument from the corporation or who was directly or indirectly interested in the supply or sale of goods to the hospital or in any work done for it. In 1949 the directors resolved to amend this byelaw by adding: "But this byelaw shall not prevent any director holding or continuing to hold office by reason of the fact that the corporation employs in a professional capacity and pays fees to a firm of which such director is a member." The court was asked to determine whether the amendment was authorised by the charter.

DANCKWERTS, J., said that although the directors were technically not trustees as the property was vested in the corporation, they were in a fiduciary position in regard to acts done in relation to the corporation and its property and were, to all intents and purposes, bound by the rules affecting trustees. In *Bray* v. *Ford* [1896] A.C. 44, Lord Herschell, having held that the memorandum of association of a limited company, which was administering an educational trust, contained no power which entitled the vice-chairman to charge for his services as a solicitor, confirmed that it was an inflexible rule of a court of equity that a person in a fiduciary position was not, unless otherwise expressly authorised, entitled to make a profit. Testators and settlors were entitled to insert charging clauses in wills and settlements, but it was a different matter for persons already in the position of trustees to do so. It was also the practice of the court, when settling schemes for the administration of charitable trusts, to exclude the trustees from remuneration. The terms of the proposed amendment would enable the persons concerned to charge full professional fees, so that they could make a profit. That did not seem to be a proper and reasonable provision to insert in the byelaws of a charitable trust at the instance of persons who were in the position of trustees. Such a byelaw was *prima facie* "repugnant to law," or alternatively it was not "reasonable" in relation to the trust under consideration.

APPEARANCES: *N. S. Warren* (*Ouvry & Co.*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: DIRECTION TO PAY DEATH DUTIES OUT OF RESIDUE: FOREIGN SUCCESSION DUTY

***In re* Cunliffe-Owen; Mountain *v.* Comber**

Wynn Parry, J. 12th April, 1951

Adjourned summons.

By a will dated 22nd November, 1947, the testator gave certain pecuniary legacies and directed that "so much of the death duties payable with reference to my death in respect of all legacies . . . as shall be equal to the death duties at the rates in force at the date of this my will shall be paid and discharged out of my residuary estate." The testator, who died on 14th December, 1947, had securities in South Africa, Canada, including Quebec, and other parts of the world. The court was asked to determine whether, as between the legatees and the residuary estate, the latter had to bear only United Kingdom death duties, or also the succession duties payable under the laws of the Union of South Africa, the Dominion of Canada and the Province of Quebec.

WYNN PARRY, J., said that in *In re Norbury* [1939] Ch. 528, Bennett, J., held that where an English testator by an English will gave a pecuniary legacy "free of duty," the only duties payable out of his estate were duties imposed by English law unless there were words in the will which made it clear that duties imposed by the law of a foreign country were to be paid thereout. He (the learned judge) thought that even in the absence of express words in the will a wider scope could be given to that principle if the circumstances of the case were sufficiently compelling. On the true construction of the will in issue in the present case and having regard to the circumstances, there was not enough to justify a departure from the rule in *In re Norbury*. Consequently, the legatees ought to bear the South African, Quebec and Dominion of Canada duties, but no other duties.

APPEARANCES: *E. I. Goulding* (*W. Gordon Hill*); *Denys Buckley*; *J. Pennycuick*, K.C., and *J. A. Wolfe*; *Christie*, K.C., and *Jackson Wolfe*; *Parker* (*Charles Russell & Co.*)

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

"AGRICULTURAL PRODUCE": IMPORTED RAW HIDES

Scarr *v.* Wurzal

Lord Goddard, C.J., Oliver and Cassels, JJ.
20th April, 1951

Case stated by the Hull stipendiary magistrate.

The defendant had a licence under Pt. III of the Transport Act, 1947, to operate a motor lorry within a radius of 25 miles from Selby; but he had, in connection with the licence, a permit to carry, among other things, "agricultural produce or requisites" outside that area. The defendant's driver was stopped outside the 25-mile radius when the lorry was carrying from Hull docks to Leeds a cargo of imported raw hides which had been discharged from a vessel at Hull. The defendant having been charged with contravening the Act of 1947 and the Road and Rail Traffic Act, 1933, in failing to comply with his licence as amended by the permit, the magistrate was of opinion that the hides, having come from somewhere unknown to a dock in Hull, had become commercial produce and were no longer pure and simple agricultural produce, there being at some time and at some place a point where the articles in question ceased to have that close association with a farm which emphasised the word "agriculture" in "agricultural produce"; and that the hides had ceased to be agricultural produce and had become something else. He accordingly convicted the defendant, who now appealed.

LORD GODDARD, C.J., said that it had been conceded that if the hides had come from animals in this country they would be agricultural produce. The defendant's permit entitled him to carry some goods from foreign parts, such as oil and building plant, so that it was not confined to the carriage of goods produced in this country. It was thus necessary to consider whether the hides were "agricultural produce," and in his opinion they were. The appeal would be allowed.

OLIVER and CASSELS, JJ., agreed.

APPEARANCES: *H. C. Scott* (*J. H. Milner & Son*, for *Mainprize, Rignall & Whitworth*, Hull); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DOGS CHASING POULTRY: DOG OWNER'S LIABILITY*

Ives *v.* Brewer and Another

Hilbery, J. 26th April, 1951

Action.

In November two dogs belonging to the defendants entered the plaintiff's smallholding and together chased his poultry. Between them the dogs killed thirty-two birds outright and injured nine others so seriously that they died the next day. Three of the slaughtered birds were cockerels and the rest were pullets. As a further result of the dogs' misbehaviour the rest of the fowls stopped laying until the following March, through the shock which they had sustained. The plaintiff claimed damages for the loss which he had thereby suffered.

HILBERY, J., said that the case was of great general interest. A large majority of the adult population kept dogs, and of that number few knew the full extent of their responsibilities, and perhaps fewer still acted with due regard to those responsibilities. It could not be too widely known that ever since the passing of the Dogs Act, 1906, the owner of a dog had been liable in damages for the injury which his dog did to other people's cattle. It was no longer necessary for a plaintiff to show that the dog was vicious or had a propensity to chase other animals. The Act of 1906 recognised from the bitter experience of people living in the countryside that responsibility for the behaviour of dogs must be put on their owners. This was just such a case, and he had no doubt that the dogs in question had done the damage which the plaintiff alleged. As regarded damages, the question was whether the plaintiff had acted reasonably in keeping the surviving fowls instead of selling them right away. He (his lordship) found that the plaintiff had minimised his injury by doing so and in endeavouring to nurse them back into laying eggs again. Judgment for the plaintiff against both the defendants for £180, including £86 for the loss due to the surviving fowls' failure to lay eggs for a period after the occurrence.

APPEARANCES: *W. W. Stabb* (*Lathom & Co.*); *F. M. Bennett* (*Joynson-Hicks & Co.*, for *Austin & Carnley*, Luton); *W. A. Sime* (*Winter & Co.*, for *Waltons*, Luton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

* Reporter's note: cf. two further recent dog cases: *Goodway* v. *Becher*, *ante*, p. 239, and *Rhodes* v. *Heritage*, *ante*, p. 255.

MAINTENANCE: DEED DECLARED INVALID

Bennett *v.* Bennett

Devlin, J. 27th April, 1951

Action.

In August, 1948, the plaintiff presented a petition for dissolution of marriage, asking for custody of the two sons of the marriage, alimony pending suit, maintenance for the younger son, and maintenance and secured provision for herself. By a deed under seal executed before decree absolute the defendant husband had agreed to make financial provision for the plaintiff and for their younger son in consideration of the plaintiff's not proceeding with the prayers for maintenance, consenting to those prayers being dismissed, and not presenting any further petition for such maintenance. The registrar, on learning of the deed, had dismissed an application for maintenance. The plaintiff by this action claimed instalments of two annuities payable under a covenant in the deed. (*Cur. adv. vult.*)

DEVLIN, J., said that in *Hyman* v. *Hyman* [1929] A.C. 601 the House of Lords had held that the power to apply for maintenance conferred on a wife by s. 190 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, was conferred not only in the interest of the wife, but also in that of the public, and that the wife could not by covenant exclude the court's jurisdiction. Unless that decision could be distinguished, the wife's promise here was void. If the wife's promise were merely a nullity, the defence would fail; for the husband's promise, being under seal, needed no consideration. If, however, the consideration were illegal, then the bond was void. He thought that the promise here was clearly illegal. There was nothing immoral about it, but it was contrary to public policy. If any part of the consideration for a promise were contrary to public policy, the promise could not be enforced. It was argued for the plaintiff that it was not contrary to public policy for a wife to promise not to apply for maintenance for her child. It was contended that *Hyman* v. *Hyman*, *supra*, should be treated as relating only to a promise made during the coverture by a wife in relation to her own maintenance. He (his lordship) could not give the decision such a restricted meaning; it appeared to him to be plainly contrary to public policy for a wife who had the custody of a child, and who was the natural person to take such action as was necessary to see that the child was adequately provided for, to promise that she would not procure, suggest, assist or encourage the taking of any proceedings on behalf of her child under s. 193 of the Act or otherwise for maintenance. The defendant's covenant was therefore unenforceable. Judgment for the defendant.

APPEARANCES: *D. A. Fairweather* (*J. B. de Fonblanque*); *N. J. L. Brodrick* (*Walter, Burgis & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

LAND FOR POLICE STATION: COMPULSORY ACQUISITION

Wiltshire County Council *v.* Wiltshire Quarter Sessions Standing Joint Committee

Lord Goddard, C.J., Croom-Johnson and Streatfeild, JJ. 27th April, 1951

Special case stated under s. 29 of the Local Government Act, 1888.

The joint standing committee of Wiltshire Quarter Sessions and Wiltshire County Council requested the county council to acquire compulsorily for the purpose of a police station land at Chippenham which its owner was unwilling to sell. The county council demurred, and this case was stated for the purpose of arriving at a determination of the rights and obligations of the committee and the county council, respectively, in the matter. The questions asked of the court were whether the county council had any general discretion to refuse to acquire compulsorily for police purposes a particular piece of land which the standing joint committee had requested them to acquire; and, if the answer to the first question were in the negative, whether the county council had any discretion to refuse to acquire compulsorily for police purposes a particular piece of land which the standing joint committee had requested them so to acquire if they were reasonably satisfied that other and equally suitable sites were available for the police purposes in question.

LORD GODDARD, C.J., giving the judgment of the court, said that in their opinion the answer to both the questions submitted was in the negative. They were bound by the decision of that court in *Ex parte Somerset County Council* (1889), 58 L.J.Q.B. 513, which, in their opinion, decided that the county council were obliged to comply with any request by the standing joint committee for any expenditure or acquisition of property or for the maintenance of property required for police purposes. The acquisition of land for a police station was an acquisition for police purposes. It had been contended that, even though the county council could be required to buy the land suggested if it could be obtained from a willing seller, they could not be compelled to exercise compulsory powers of acquisition. By the Acquisition of Land (Authorisation Procedure) Act, 1946, the council of any county might be authorised by the Minister of Health to purchase compulsorily land required for the purpose of any of the functions of the police authority for the county. The only difference which that made was that the county council must apply to the Minister for permission to exercise compulsory powers. If he refused permission, the council could not override his decision. The mere fact that compulsory powers had to be exercised was not an answer to the request made by the standing joint committee.

APPEARANCES: *A. Capewell*, K.C., and *G. D. Squibb*; *Percy Lamb*, K.C., and *J. P. Widgery* (*Collyer-Bristow & Co.*, for *P. A. Selbourne Stringer*, Trowbridge (for all parties)).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

"CONTINUOUSLY UNDER CARE AND TREATMENT": INTERRUPTION

F. *v.* F.

Mr. Commissioner Bush James, K.C.
27th April, 1951

Petition for divorce.

The petitioning husband alleged that his wife was incurably of unsound mind and had been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. She had been admitted to a mental hospital in England on 16th October, 1945, under the authority of a reception order dated 12th October, 1945. She remained there until 23rd December, 1946, when the reception order was discharged and the patient was taken under escort to a mental hospital in Scotland, where a sheriff's order was made under the Lunacy (Scotland) Acts, 1857 to 1919; but there was a short period between her leaving the hospital in England and being certified in Scotland when no certificate was in existence. There was a similar short break in the continuity of her certification when in March, 1948, she was brought back from Scotland and admitted to another mental hospital in England. By s. 1 (1) (*d*) of the Matrimonial Causes Act, 1950, a petition for divorce may be presented either by the husband or the wife on the ground that the respondent "is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition." By subs. (2) a person of unsound mind is to be deemed to be under care and treatment while he or she is detained under any of the orders or inquisitions specified in the subsection.

MR. COMMISSIONER BUSH JAMES, K.C., said that one definition of the word "continuous," which was the operative word here, to be found in the dictionary was "conjoined without intervening space of time; uninterrupted." *Crutchfield* v. *Crutchfield* (1946), 62 T.L.R. 661, and *Murray* v. *Murray* [1941] P. 1, appeared to be decisive of the present case. There were periods here when the statute was not complied with. The petition therefore failed. Petition dismissed.

APPEARANCES: *J. B. Latey* (*Capel Cure, Glynn Barton and Co.*); *Stuart Horner* (*Official Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

TAKING INTO CONSIDERATION: PROCEDURE HEARSAY EVIDENCE OF CHARACTER

R. *v.* Marquis

Lord Goddard, C.J., Hilbery and Hallett, JJ.
5th March, 1951

Appeal against sentence.

When the appellant was before justices at Barnstaple on two charges of obtaining money by false pretences he asked to have nineteen other similar charges taken into consideration. The justices committed him to quarter sessions for sentence because they thought that, having regard to his character and antecedents, such sentence as they could pass upon him was not adequate. The recorder passed a sentence of eighteen months' imprisonment and this appeal was against that sentence.

LORD GODDARD, C.J., giving the judgment of the court, gave reasons for dismissing the appeal and said that for the guidance of quarter sessions he would remind them that, where a prisoner asked for other offences to be taken into account, it was not as a rule enough for the recorder to be told that the prisoner had signed a form on which the other offences were mentioned; the prisoner should be told straight out what those other offences were and should be asked whether he admitted the offences and desired them to be taken into consideration. It was not necessary in every case to put the details of each case, but the chairman should ask him: "Have you received this list of cases which you have signed showing the other offences which are outstanding against you?" If he said "yes," he should be asked, "do you admit those cases and wish them to be taken into consideration?" He could then say "yes" or "no" as the case might be; or he could say "yes, I admit some, but I do not admit others." That ought to have been, but was not, done here. It was not, however, a rule of law that it must be done, for this taking of other offences into consideration was only a convention. It was a device which had been used by the judges for many years with a view to preventing a man from being arrested on other charges immediately he came out of prison, and to giving him a clean sheet in respect of those cases. A further point was that the recorder seemed to have had some doubt whether he could after conviction accept what he called "hearsay evidence" of the prisoner's character. Of course he could: after conviction the court was always informed of the character which the prisoner bore, and that character was very often proved by a police officer, who might, for example, be speaking in Devon of convictions which have taken place as far away as in Northumberland. He could not speak about them from personal knowledge, but he could produce the prisoner's record; and it was always perfectly proper to take into account any information which could be given, either for or against the prisoner, although it was not proved with the same strictness as would be necessary to prove a thing against him on his trial. Appeal dismissed.

APPEARANCES: *John Ward* (Registrar, C.C.A.); the appeal was unopposed.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRECTIVE TRAINING: SENTENCE CONCURRENT WITH IMPRISONMENT

R. *v.* Heritage

Oliver, Cassels and Sellers, JJ.
10th April, 1951

Appeal against sentence.

The appellant pleaded guilty at Cambridgeshire Quarter Sessions to the theft of a caravan in 1948. At the date of his trial he was serving a sentence of 18 months' imprisonment for false pretences imposed on 9th October, 1950, and quarter sessions treated that sentence and a probation order of 1949 as the previous convictions necessary under s. 21 (1) (*b*) of the Criminal Justice Act, 1948, to qualify him for corrective training. Quarter sessions decided that a proper order was three years' corrective training to run concurrently with his existing sentence of imprisonment.

CASSELS, J., delivering the judgment of the court, said that it was wrong for there to be running at the same time a sentence of imprisonment and one of corrective training, as the two were almost contradictory in terms. It had also been argued that the requirement of two previous convictions specified in s. 21 of the Act of 1948 might or might not be satisfied in certain circumstances by showing that an offender, who was before the court for punishment in respect of an offence earlier than the two previous convictions, had, by his subsequent offences and punishments, shown the court that it was in his own and the public's interests that he should undergo corrective training. The court did not decide that point but left it to the discretion of the courts concerned. In the special circumstances of the present case, if the appellant had on 9th October, 1950, asked for his offence in 1948 to be taken into consideration he might not have been before Cambridgeshire Quarter Sessions at all. The court would direct that a sentence of 18 months' imprisonment should be substituted, to date from 9th October, 1950, and to run concurrently with the existing sentence of imprisonment. Sentence varied.

APPEARANCES: *W. H. Hughes* (Registrar C.C.A.); *R. E. Seaton* (D.P.P.).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The King has been pleased to appoint Sir JOHN WILLIAM MORRIS, one of the Justices of the High Court of Justice, a Lord Justice of Appeal.

On the appointment of Sir HARTLEY SHAWCROSS to the office of President of the Board of Trade, Sir FRANK SOSKICE has been appointed Attorney-General and Mr. A. L. UNGOED-THOMAS Solicitor-General.

Mr. J. T. MOLONY has been appointed Recorder of the Borough of Devizes.

Mr. E. C. Dickson, solicitor, of Preston, was married on 21st April to Miss Joyce Mary Houghton, of Broughton.

Mr. W. D. Reed has been presented with a cabinet-mounted canteen of cutlery to mark his completion of fifty years' service with Messrs. Brain and Brain, of Reading.

Mr. H. G. Williams, solicitor, of Chester, and registrar of the Chester diocese, who has been clerk to Chester Rural Council for thirty-one years, was presented on 26th April with an inscribed silver salver to mark his retirement.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 26th April :—

Army and Air Force (Annual)
City of London (Central Criminal Court)
Falkirk Borough Extension, etc., Order Confirmation
Lloyds
Oxford Motor Services
Supplies and Services (Defence Purposes)

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Fire Services Bill [H.C.] [24th April.
Fraudulent Mediums Bill [H.C.] [24th April.
New Streets Bill [H.C.] [24th April.

Read Second Time :—

Aberdeen Chartered Accountants' Widows' Fund Order Confirmation Bill [H.C.] [24th April.
Edinburgh Chartered Accountants' Annuity, etc., Fund Order Confirmation Bill [H.C.] [24th April.
Leasehold Property (Temporary Provisions) Bill [H.C.] [24th April.
Long Leases (Temporary Provisions) (Scotland) Bill [H.C.] [26th April.
Reverend J. G. MacManaway's Indemnity Bill [H.C.] [24th April.

In Committee :—

Rag Flock and Other Filling Materials Bill [H.L.] [26th April.
Salmon and Freshwater Fisheries (Protection) (Scotland) Bill [H.C.] [26th April.
Sea Fish Industry Bill [H.C.] [26th April.

B. Debates

On the motion for the Second Reading of the **Leasehold Property (Temporary Provisions) Bill** Viscount Simon commented on the notably different treatment accorded by the Bill to the two cases of shops and dwelling-houses. In the case of shops the court, in deciding whether to grant a new tenancy or not, could fix an appropriate rent for the period of the extension. This decision was not subject to any sort of appeal, and yet the principles on which it was to be arrived at were not by any means fully defined. The Bill applied only to shops occupied wholly or mainly for carrying on a retail trade, but the question would arise to what other premises it applied. As at present drawn the Bill was not available to secure an extension of the tenancy of unlicensed premises, or of licensed restaurants and cafés. The provisions as to shops applied to tenancies of any length, however short, whereas in Pt. I (dwelling-houses) the Bill applied only to leases which in their original term were for twenty-one years or more.

Turning to Pt. I of the Bill, Lord Simon said it must not be forgotten that when a long lease was expiring the situation in which the lessee now found himself might be very different from that in which he was when he first accepted the lease. There was now a very great scarcity of accommodation. This, he thought, was a much better reason for helping ground lessees than the fact that some of them had not thought that what they were buying would come to an end some day. In that situation surely the fair thing would have been to continue the lease, not at the rent which was fixed, perhaps, ninety-nine years ago, but at a rent which was equitable at the present day. The Bill, however, did not do this. It would take a long time for the county courts to decide what was a fair rent, and he suggested that occupying ground lessees who were given an additional period of occupation should pay either the rateable value or the reserved rent, whichever was the higher.

Turning to more general matters, Lord Simon asked what was the scope of Pt. I of the Bill. The Lord Chancellor had spoken as though the Bill dealt solely with residential property in the ordinary sense of a " dwelling-house " and the like, but he could not see any limitation of that sort. So far as he could see, all that was necessary for a tenancy to qualify for protection under cl. 1 or cl. 2 was that it should have been granted for a term of years certain and that it should expire within the two years beginning with the commencement of the Act. Provided that someone lived on the premises the language would apply to factories and warehouses equally with residential property. He was also of the opinion that it was incorrect to say that the benefit would not apply unless the lessee was living on the premises. All that was required was that immediately before the date of expiry the tenant or a member of his family should be living on the property.

Among other anomalies created by the Bill, Lord Simon instanced the case of an estate that would have paid death duties on a reversion that formed part of the estate, the reversion being valued as if possession could be got in, say, six months' time. Now possession was postponed for at least two years, and the reversion, and consequently the estate, were considerably less valuable. He thought it grossly unfair that the landlord, who was prevented by the Bill from enforcing a covenant to repair, should be invited to go in and spend his own money on the repairs.

Viscount Buckmaster said that the first part of the Bill did not adopt any one of the recommendations of the majority report of the Leasehold Committee and very few of those of the minority report. During the two-year standstill period, the landlord could only do repairs " necessary for preventing or arresting serious depreciation." This standard of repair was far below what he would term normal maintenance of the property. Surely the tenant was already protected against penal claims for dilapidations by the Landlord and Tenant Act, 1927, and the Leasehold Property (Repairs) Act, 1938. The Bill would stifle development, for one of the principal benefits of the leasehold system was that when leases fell in the landlord was able to prepare a comprehensive scheme for rebuilding. Such schemes would now be indefinitely shelved. The Bill went far beyond anything done by the Rent Restriction Acts. Those Acts fixed rents as in 1914. The present Bill fixed them, not as they were at the time of the Boer War, but in some cases as they were at the time of the Indian Mutiny.

Lord Silkin said that he doubted very much whether this Government or any possible successor would be in a position to legislate in time to substitute a permanent measure for this one that expired at the end of two years. This would probably mean a further extension of the present measure, as it was inconceivable that there should be a return to the present condition. He felt that the Government might well have introduced permanent legislation now rather than this temporary legislation that gave rise to so many difficulties. Lord Llewellyn said that the Commissioners of Crown Lands in the past had made a very good thing out of long ground leases and he suspected that the Ministry of Local Government and Planning was also in favour of long ground leases, otherwise the Town and Country Planning Act and the New Towns Act would not have required that land acquired by planning authorities and development corporations should not be disposed of except by way of leases not exceeding ninety-nine years. He had a pretty shrewd idea that the Cabinet Committee at present said to be sitting on this problem was trying to get these departments to come into line.

The Lord Chancellor said that the Bill had been deliberately framed so that it could not be continued by the Expiring Laws (Continuance) Act. This Bill was a purely temporary measure and active consideration was already being given as to what the new Leasehold Bill should contain. The Bill differed from the recommendations of the Uthwatt and Jenkins Committees, because they were concerned to consider permanent legislation only. The Bill addressed itself to the purely temporary problem. The Leasehold Property (Repairs) Act of 1938 protected tenants from the enforcement of covenants except in so far as that enforcement was held by the court to be necessary to prevent serious dilapidation. That Act, however, had no application to leases with which the present Bill dealt. Quite apart from the fact that it applied only to dwellings with a rateable value of less than £100, the protection that it gave came to an end with the beginning of the last five years of the term. Again, s. 146 of the Law of Property Act, 1925, required a tenant to be given notice of a landlord's claim for dilapidations and enabled him to apply to the court for relief against forfeiture, not against a claim for damages. The court had power to impose conditions, and normally did impose the condition that the breach must be

remedied. The tenant who therefore had not the means to comply with the landlord's notice of dilapidations would not normally secure protection under s. 146. [24th April.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

London County Council (Money) Bill [H.C.]	[23rd April.
National Health Service Bill [H.C.]	[24th April.
National Insurance Bill [H.C.]	[26th April.

Read Third Time :—

British Transport Commission Bill [H.C.]	[27th April.
Great Yarmouth Port and Haven Bill [H.C.]	[27th April.

B. Debates

On the Report Stage of the **New Streets Bill,** Mr. Mitchison said that considerable alterations had been made to the Bill in committee stage, some of the most important of which were in cl. 1 (3), where a number of exclusions from the operation of the clause had been inserted—and it was cl. 1 which set in motion the whole machinery of the Bill. One such exclusion, cl. 1 (3) (*f*), dealt with the case where streets were already substantially built up and new buildings were to be erected on them. The effect of the provision at present was to leave it to the local authority, in those cases where they were satisfied that the street was substantially built up, to exclude them from the operation of the Bill, and so to have the whole street treated under existing legislation. It was thought that this put an exceedingly heavy burden on the local authorities, and that it would be better met by still leaving them with power to act in that way, but also by excluding from the operation of the Bill those cases in which the street, or part of the street, was half built up already. The amendment which he now proposed was therefore an additional exclusion from the operation of the Bill. Mr. Geoffrey Hutchinson said he would have preferred that existing streets should have been excluded from the Bill altogether. He feared that a person building a new house on an existing street would have to make a deposit or give full security for the making up of the road near his plot, although there was no guarantee that the local authority would be able to make up the road within the foreseeable future. The amendment was agreed to.

Another amendment which was agreed to was one proposed by Mr. Gibson designed to exclude from the Bill not only building land owned by local authorities, but also land of which they were "in possession." A local authority might obtain a compulsory purchase order and begin constructing houses under the law without having actually secured ownership. Mr. Henry Brooke said that but for this amendment local authorities might find their housing proceedings held up during the period between obtaining confirmation of a compulsory purchase order and the date when the land passed finally into their ownership.

The House then proceeded to the Third Reading of the Bill. [20th April.

C. Questions

Requisitioned Houses (Release)

Mr. Hutchinson asked what instructions were now being given by the Ministry of Local Government and Planning to local authorities with regard to the releasing of requisitioned houses to their owners, if the owner or any member of his family desired to occupy the house. Mr. Dalton said that no new instructions had been given, but he would like to see local authorities make an order of priority for the release of requisitioned properties, and he thought that in doing so they should give some special consideration to owner-occupiers. [23rd April.

Marriage and Divorce (Royal Commission)

Mr. Herbert Morrison, on behalf of the Prime Minister, said that the composition and terms of reference of the Royal Commission on marriage and divorce were under active consideration, but he could not yet make any statement on them. [24th April.

Valuation Officers (Inspection)

Mr. Gaitskell said there was a standing instruction to valuation officers to meet all reasonable requests as to dates and times for inspection of private houses for purposes of valuation. If the property was unoccupied during office hours, the valuation would be carried out at some other time. In reply to an earlier question, Mr. Gaitskell said valuation officers now had power to carry out inspections and investigations on private premises without a search warrant since the Inland Revenue Department had taken over valuation duties from the local authorities. [24th April.

Judges' Salaries

Mr. Gaitskell said the Government had never accepted as a pledge to increase the salaries of the judges a statement made two years ago by the former Financial Secretary to the Treasury to the effect that legislation would be introduced. Mr. Churchill asked whether the question might be examined from the point of view of some expense allowance for these high functionaries who were so much affected by all movement expenses. Mr. Gaitskell said he was not aware that His Majesty's judges had any difficulty on the score of expense allowances. There was no reply to a question by Mr. Sidney Silverman as to whether the Minister was aware that when judges were engaged on judicial business outside London they were already in receipt of very generous expense allowances. [24th April.

New Houses (Selling Prices)

Mr. Dalton undertook to examine cases put forward by Mr. Watkinson in which local authorities were allowed to issue supplementary building licences to cover the additional cost of raw materials, but could not allow such increase to be added to the maximum selling prices of the houses. [24th April.

Alimony and Maintenance (Prison Sentences)

Mr. Chuter Ede stated that the number of men committed to prison by magistrates' courts in 1950 for failing to pay maintenance to their wives was 3,544. Similar information with regard to orders made by the High Court was not available, but he was informed that only five warrants of commitment for debt were issued by the Divorce Division in the same period. Lieut.-Col. Lipton asked whether these distressing figures—which had more than doubled in the last ten years and which seemed to be increasing—would be brought to the notice of the Royal Commission on divorce law when it was set up. Mr. Ede said he had no doubt they would make inquiries into this matter, but, after all, when a woman got a maintenance order she was entitled to take the necessary action to get it enforced. In reply to a further question, Mr. Ede said there were no statistics on the matter, but he knew from his own experience as a magistrate that in some cases men went to prison voluntarily rather than pay alimony or maintenance. [26th April.

STATUTORY INSTRUMENTS

Byssinosis (Benefit) Scheme (Modification) Regulations, 1951. (S.I. 1951 No. 671).

Colchester Water Order, 1951. (S.I. 1951 No. 667.)

Colne Valley Water Order, 1951. (S.I. 1951 No. 674.)

Food Standards (Cream) Order, 1951. (S,I. 1951 No. 668.)

Hat, Cap and Millinery Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 677.)

Hemel Hempstead New Town Sewerage Order, 1951. (S.I. 1951 No. 687.)

Iron and Steel Scrap (No. 2) Order, 1951. (S.I. 1951 No. 678.)

Lace and Woven Curtain Net (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 682.)

London Traffic (Prescribed Routes) (No. 5) Regulations, 1951. (S.I. 1951 No. 685.)

London Traffic (Prohibition of Waiting) (Woking) Regulations, 1951. (S.I. 1951 No. 672.)

Medical Disciplinary Committee (Procedure) Rules Approval Order of Council, 1951. (S.I. 1951 No. 665.)

Military Training (Travelling Time) Regulations, 1951. (S.I. 1951 No. 681.)

Milk Distributive Wages Council (Scotland) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 664.)

Newsprint (Prices) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 683.)

Paper (Prices) (No. 2) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 684.)

Perth–Aberdeen–Inverness Trunk Road (Inchture and North Mains Diversions) Order, 1951. (S.I. 1951 No. 686.)

Pupil's Progress Record (Scotland) Rules, 1951. (S.I. 1951 No. 694 (S. 33).)

Stopping up of Highways (Brecknockshire) (No. 1) Order, 1951. (S.I. 1951 No. 691.)

Stopping up of Highways (London) (No. 10) Order, 1951. (S.I. 1951 No. 690.)

Utility Mattresses, Pillows and Bolsters (Maximum Prices) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 680.)

Wages Regulation (Licensed Non-Residential Establishment) (Holidays) Order, 1951. (S.I. 1951 No. 675.)

Wages Regulation (Licensed Non-Residential Establishment) (Managers and Club Stewards) Order, 1951. (S.I. 1951 No. 676.)

Ware Potatoes (Amendment No. 2) Order, 1951. (S.I. 1951 No. 711.)

Water Byelaws (Extension of Operation) (Scotland) Order, 1951. (S.I. 1951 No. 693 (S. 32).)

West Riding of Yorkshire Rivers Board Dissolution Order, 1951. (S.I. 1951 No. 673.)

NOTES AND NEWS

Honours and Appointments

Mr. A. H. GLENN CRASKE has been unanimously elected a Master of the Bench of the Middle Temple.

The following appointments are announced in the Colonial Legal Service: Mr. J. C. BURT, Resident Magistrate, Gold Coast, to be Registrar-General, Gold Coast; Mr. J. J. M. LAVOIPIERRE, District Magistrate, Mauritius, to be Magistrate of the Industrial Courts, Mauritius; Mr. J. S. MANYO-PLANGE, Senior Crown Counsel, Nigeria, to be Puisne Judge, Nigeria; Mr. G. S. VASSILIADES, District Judge, Cyprus, to be President, District Court, Cyprus; Mr. W. J. THOROGOOD, late Registrar, Supreme Court, Singapore, to be Resident Magistrate, Jamaica; and Mr. H. B. LIVINGSTONE to be District Judge and Magistrate, Singapore.

Miscellaneous

At The Law Society's Final Examination, held on 12th, 13th and 14th March, 215 candidates out of 379 were successful. The Council have awarded the following prizes: To B. R. D. Clarke, the Sheffield Price; and to H. A. Howden, the John Mackrell Prize.

The eleventh Clarke Hall lecture, "The Juvenile Court To-day and To-morrow," will be delivered in the New Hall of Lincoln's Inn, at 4.30 p.m., on Tuesday, 8th May, 1951, by Mr. John Watson, Chairman of the South-East London Juvenile Court. The chair will be taken by The Rt. Hon. the Earl of Feversham, D.S.O., J.P., chairman of the Clarke Hall Fellowship.

P.A.Y.E.—Z AND G CLASS RESERVISTS

The Inland Revenue state that there is no need for an employer to send to the tax office a P.A.Y.E. leaving certificate on form P.45 when an employee leaves for fifteen days or three months' training.

TOWN AND COUNTRY PLANNING (NATIONAL COAL BOARD)

The Town and Country Planning (National Coal Board) Regulations, 1951, made under the Town and Country Planning Act, 1947, have been laid before Parliament. They give the Coal Board the benefit of some of the arrangements made for statutory undertakers by the 1947 Act, including a right to the payment of compensation on a special basis if the development of certain of their land is hindered by planning restrictions. The regulations also contain a new formula for the assessment of compensation in cases where the working of coal underground is affected.

"NEAR-RIPE" MINERALS

An explanatory memorandum (Cmd. 8217) on the draft regulations to be presented to Parliament in connection with "near-ripe" minerals has been issued jointly by the Minister of Local Government and Planning and the Secretary of State for Scotland. The memorandum [H.M.S.O., price 9d.] includes the text of the draft regulations. The regulations, which require Parliamentary approval, are proposed under the Mineral Workings Bill at present before Parliament. The memorandum explains that under the Town and Country Planning Act, 1947, development charge is payable, and claims could be made on the £300m., in respect of minerals. Certain owners of mineral-bearing land on 1st July, 1948, have been promised "near-ripe" treatment, whereby their development charges will be set off against the full value of their claims. The draft regulations, which are explained in detail in the memorandum, provide for this setting-off.

LAND HELD BY CHARITABLE AND ECCLESIASTICAL ORGANISATIONS

APPLICATION FOR DEVELOPMENT CHARGE EXEMPTIONS

Charitable and ecclesiastical organisations are reminded by the Minister of Local Government and Planning that they must apply to him by 1st July, 1951, if they want to have land which qualifies under s. 85 (5) of the Town and Country Planning Act, 1947, exempted from development charge. The Minister has no power to accept applications made after this date. Forms of application (C.T.L. Revised) may be obtained from the Secretary, Ministry of Local Government and Planning, 23 Savile Row, London, W.1.

SPECIAL CONTROL OF OUTDOOR ADVERTISEMENTS IN ISLE OF WIGHT

The Minister of Local Government and Planning has informed the Isle of Wight County Council that he intends to approve an order making a large part of the island an area of special control in the matter of outdoor advertisements. The area of special control extends over the whole island with the exclusion of a number of built-up districts in the main towns and villages. This decision gives effect to proposals which were the outcome of an agreement between the Isle of Wight County Council and the Outdoor Advertising Industry Advisory Committee. A public inquiry was held at Newport, Isle of Wight, on 30th January, 1951.

ST. ALBANS COUNTY COURT

The Lord Chancellor has ordered that, with effect from 1st August next, His Honour Judge Sir Gerald Hargreaves and His Honour Judge Reid shall cease to be the judges for the district of the St. Albans County Court and His Honour Judge Granville Smith and His Honour Judge MacMillan shall be the judges for the said district in addition to the districts for which they are now the judges.

PATENT OFFICE LIBRARY EXTENDED HOURS OF OPENING FROM 7TH MAY

From next Monday, 7th May, the Patent Office Library at 25 Southampton Buildings, Chancery Lane, London, W.C.2, will be open to the public from 10 a.m. until 9 p.m., Mondays to Fridays inclusive, instead of closing at 6 p.m. as at present. Saturday opening, however, will continue to be from 10 a.m. to 5 p.m.

SOCIETIES

The Hon. Mr. Justice Cassels will take the chair at the annual general meeting of the BARRISTERS' BENEVOLENT ASSOCIATION, which will be held in the Middle Temple Hall, on Wednesday, 9th May, at 4.45 p.m.

The LAW STUDENTS' DEBATING SOCIETY announce the following debate at The Law Society's Court Room, at 7 p.m., on 8th May: "That '*Hengist* v. *Horsa*' was wrongly decided."

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